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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

EPIC GAMES, INC.,

Plaintiff,

v.

GOOGLE LLC et al.,

Defendants.

Case No. 3:20-cv-05671-JD
Case No. 3:21-md-02981-JD

**EPIC GAMES, INC.'S
ADMINISTRATIVE MOTION TO
CONSIDER WHETHER ANOTHER
PARTY'S MATERIAL SHOULD BE
SEALED**

Pursuant to Civil Local Rules 7-11 and 79-5, Plaintiff Epic Games, Inc. (“Epic”) hereby moves the Court to issue an administrative order on the filing under seal of certain portions of Epic’s Opposition to Google’s and Spotify’s Administrative Motions to Seal Trial Exhibits and Portions of Deposition of Sandra Alzetta (“Epic’s Opposition”). A public redacted version of Epic’s Opposition has been filed in accordance with this Court’s Local Rules.

Subsection (f) of Civil Local Rule 79-5 sets forth procedures that apply when a party seeks to file information designated as confidential by the opposing party. Under subsection (f)(1), the Filing Party’s Administrative Motion to Consider Whether Another Party’s Material Should Be Sealed “must identify each document or portions thereof for which sealing is sought”. Pursuant to subsection (f)(3) of Local Rule 79-5, the Designating Party then has 7 days to file a declaration establishing that all of the designated material is “sealable” according to the standards set out in subsection (c)(1), after which any party may respond within 4 days, pursuant to subsection (f)(4). Civil Local Rule 79-5 provides that documents, or portions thereof, may be sealed if a party makes “a specific statement of the applicable legal standard *and* the reasons for keeping a document under seal, including an explanation of (i) the legitimate private or public interests that warrant sealing; (ii) the injury that will result if sealing is denied; and (iii) why a less restrictive alternative to sealing is not sufficient”. Civ. L.R. 79-5(c)(1) (emphasis in original).

There is a “strong presumption of access” to judicial records and “‘compelling reasons’ must be shown to seal judicial records”. *Kamakana v. City & Cnty. of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006) (citations omitted). Moreover, where “the material to be sealed goes to the very heart of the suit, the public interest in access is especially great”. *Tevra Brands LLC v. Bayer Healthcare LLC*, No. 19-cv-4312, 2020 WL 1245352, at *2 (N.D. Cal. Mar. 16, 2020). Compelling reasons justifying the sealing of court records generally exist “when such court files might have become a vehicle for improper purposes, such as the use of records to gratify private spite, promote public scandal, circulate libelous statements, or release trade secrets”. *Kamakana*, 447 F.3d at 1179 (internal quotation marks omitted). However, “[t]he mere fact that the production of records may lead to a litigant’s embarrassment,

1 incrimination, or exposure to further litigation will not, without more, compel the court to seal
 2 its records”. *Id.* Moreover, “[t]he fact that the parties may have designated a document as
 3 confidential under a stipulated protective order is also not enough to justify sealing.” (MDL
 4 Dkt. No. 89 at 2.)

5 Epic’s Opposition contains information that is sourced from documents that Defendants
 6 Google LLC, Google Ireland Limited, Google Commerce Limited, Google Asia Pacific Pte.
 7 Limited, and Google Payment Corp. (collectively, “Google”) and non-party Spotify USA Inc.,
 8 have designated as “CONFIDENTIAL”, “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
 9 ONLY” or “NON-PARTY HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL EYES
 10 ONLY” pursuant to the operative Protective Orders entered by the Court, MDL Dkt. Nos. 238
 11 and 249. Those portions are identified in the Declaration of Michael J. Zaken submitted
 12 herewith and highlighted in the under seal version of Epic’s Opposition.

13 Epic opposes the sealing of any portions of these documents but seeks leave to
 14 provisionally file the documents under seal because they discuss materials that Google and
 15 Spotify have designated confidential or highly confidential under the protective order in this
 16 case. *See* Local Rule 79-5(f). Plaintiffs reserve the right to oppose, under Rule 79-5(f)(4), any
 17 submission Google makes to support sealing under Rule 79-5(f)(3).

18
 19 Dated: November 10, 2023

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28 Respectfully submitted,

By: /s/ Michael J. Zaken
 Michael J. Zaken

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